

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

ALVIN L. SUTHERLIN, JR.,

Plaintiff,

v.

LIEUTENANT J.W. SMITH, SERGEANT  
H.S. RICHARDSON, OFFICER N.M.  
SLOVER, OFFICER M.C. PACE,  
OFFICER R.C. LANDRUM, OFFICER  
D.C. LANCASTER, OFFICER W.C.  
SHIVELY, OFFICER W.R. MERRILL,  
OFFICER J.D. DIXON, and OFFICER L.D.  
LAND,

Defendants.

Case No. 4:15-cv-00037

**ORDER**

By: Hon. Jackson L. Kiser  
Senior United States District Judge

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On November 5, 2015, Defendants moved to dismiss Plaintiff's Complaint for failure to state a claim on which relief may be granted. (See Mot. to Dismiss, Nov. 5, 2015 [ECF No. 6].) The parties briefed this matter,<sup>1</sup> and on January 29, 2016, they appeared before me to argue their positions. Having fully considered their filings and arguments, the matter is now ripe for disposition.

For the reasons stated in the accompanying Memorandum Opinion, I hereby **GRANT IN PART** and **DENY IN PART** Defendants' Motion to Dismiss. I hereby **DISMISS** Plaintiff's 42 U.S.C. § 1985 conspiracy claim and 46 U.S.C. app. § 322 claim as well as any claim on slander

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<sup>1</sup> I make the following rulings for purposes of considering Defendants' motion to dismiss. I hereby **GRANT** Plaintiff's motions to amend [ECF Nos. 36, 37] his Response to Brief in Support of Motion to Dismiss [ECF No. 19] so as to state the correct date of the incidents in question. I hereby **GRANT** Defendants' motion to strike [ECF No. 43] Plaintiff's Brief in Support of Complaint [ECF No. 35] as redundant or impertinent. Finally, I hereby **DENY** Plaintiff's Motion to Amend Oral Argument at the Motion to Dismiss Hearing [ECF No. 54], which asks the Court to accept, as evidence opposing Defendants' motion to dismiss, a video on the City of Danville Police Department's use and maintenance of video evidence. There is no occasion to consider this video in relation to the motion to dismiss.

or on a violation of the Sixth Amendment, Va. Code Ann. § 19.2-59, or Article I, § 10 of the Virginia Constitution. Respecting Plaintiff's 42 U.S.C. § 1983 claim, I hereby **DISMISS** it only to the extent that it attempts to state a claim on the entry into Ms. Owens' apartment and to the extent that it names Defendants in their official capacity. With exception of the claim on the alleged unannounced, no-knock entry, I hereby **DISMISS** the following Defendants from the case: Lieutenant Smith, Officer Slover, Officer Dixon, Officer Shively, Officer Merrill, Officer Pace, and Officer Landrum.

At the hearing on the motion to dismiss, Plaintiff advised that he had filed a motion for leave to amend the Complaint, to supplement the Complaint, and to join additional defendants. (See Pl.'s Mot. for Leave to Amend & Supplement Compl.; and for Joinder of Additional Defs., Jan. 26, 2016 [ECF No. 50].) The Motion cites Rules 15(a)(2), 15(d), and 20, respectively. (Id. at pg. 2.) Because Plaintiff filed it before the hearing on Defendants' motion to dismiss and without the benefit of the Court's ruling on the motion to dismiss, I hereby **DENY** Plaintiff's motion as premature. If, upon Plaintiff's review of this Court's rulings on the motion to dismiss, Plaintiff should still desire to amend his Complaint, to supplement his Complaint, to join additional parties, or to accomplish some combination thereof, he is advised to file an appropriate motion in accordance with the Rules.

The clerk is directed to forward a copy of this Order and accompanying Memorandum Opinion to pro se Plaintiff and to Defendants' counsel of record.

Entered this 17<sup>th</sup> day of February, 2016.

s/Jackson L. Kiser  
SENIOR UNITED STATES DISTRICT JUDGE